IN RE: PET FOOD PRODUCTS LIABILITY LITIGATION Doc. 136

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ATTEST
By Bonita Bagley on Apr 08, 2008
FOR THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

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Apr 08, 2008
FILED
CLERK'S OFFICE

IN RE: PET FOOD PRODUCTS LIABILITY LITIGATION

Winston David Snell, et al. v. Dick Van Patten's Natural Balance Pet Foods, Inc., et al., S.D. Texas, C.A. No. 6:07-66) MDL No. 1850

TRANSFER ORDER

Before the entire Panel*: Plaintiffs and defendant Natural Balance Pet Foods, Inc. (Natural Balance) have moved, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), asking the Panel to vacate its order conditionally transferring the *Snell* action to the District of New Jersey for inclusion in MDL No. 1850. Defendant Wilbur-Ellis Co. (Wilbur-Ellis) opposes the motions.

After considering all argument of counsel, we find that *Snell* involves common questions of fact with actions in this litigation previously transferred to the District of New Jersey, and that transfer of *Snell* to the District of New Jersey for inclusion in MDL No. 1850 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. We further find that transfer of *Snell* is appropriate for reasons that we set out in our original order directing centralization in this docket. In that order, we held that the District of New Jersey was a proper Section 1407 forum for actions involving allegations relating to the recalls of pet food products allegedly tainted with melamine contained in components imported from China. *See In re Pet Food Products Liability Litigation*, 499 F.Supp.2d 1346 (J.P.M.L. 2007).

Plaintiffs and Natural Balance argue against transfer that unique questions of fact in *Snell* predominate over any questions of fact that *Snell* may share with the actions in MDL No. 1850, because (1) the allegedly tainted component in the pet food at issue in *Snell* is rice protein concentrate, rather than wheat gluten, as found in most MDL No. 1850 actions; (2) *Snell* involves unusually large financial loss and numbers of pets; and (3) *Snell* includes claims based on pet food being advertised as "Made in America." Based upon the Panel's precedents and for the following reasons, we respectfully disagree with these arguments. Currently pending MDL No. 1850 actions are not limited to claims involving wheat gluten; nor are the *Snell* factual allegations much different. As in MDL No. 1850, the *Snell* claims are concerned with the recall of allegedly contaminated pet

* Judge Scirica did not participate in the disposition of this matter.

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food products that contained components manufactured in China.[1] It may be, on further refinement of the issues and close scrutiny by the transferee judge, that *Snell* or any separable claims could be remanded under 28 U.S.C. § 1407(a) to the Southern District of Texas. If the transferee judge deems remand of *Snell* or any of its separable claims to become appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See* Rule 7.6, R.P.J.P.M.L., 199 F.R.D. at 436-38.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, *Snell* is transferred to the District of New Jersey and, with the consent of that court, assigned to the Honorable Noel L. Hillman for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

PANEL ON MULTIDISTRICT LITIGATION

John G. Heyburn II
Chairman

D. Lowell Jensen
Robert L. Miller, Jr.
David R. Hansen
J. Frederick Motz
Kathryn H. Vratil
Anthony J. Scirica*

[1] In this respect, *Snell* is distinguishable from *Picus v. Wal-Mart Stores, Inc., et al.*, No. 2-07-686 (D. Nev.), in which we granted a motion to vacate. The *Picus* claims arose solely from allegedly deceptive representation regarding the geographic origin of the pet food products, rather than from the death or illness of a pet. The pet food recalls were only tangentially related to the *Picus* action insofar as they brought to light the fact that some pet food components were not manufactured in the United States, as advertised.

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

CHAIRMAN:
Judge John G. Heyburn II
United States District Court
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United States District Court
Northern District of California

Judge J. Frederick Motz
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United States District Court
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Judge Kathryn H. Vratil
United States District Court
District of Kansas

Judge David R. Hansen
United States Court of Appeals
Eighth Circuit

Judge Anthony J. Scirica
United States Court of Appeals
Third Circuit

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April 8, 2008

William T. Walsh, Clerk
1050 Mitchell H. Cohen U.S. Courthouse
400 Cooper Street
Camden, NJ 08102

Re: MDL No. 1850 -- IN RE: Pet Food Products Liability Litigation

Dear Mr. Walsh:

Attached is a certified copy of a transfer order issued today by the Judicial Panel on Multidistrict Litigation in the above-captioned matter. The order is directed to you for filing. Rule 1.5 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 428 (2001), states "A transfer or remand pursuant to 28 U.S. C. § 1407 shall be effective when the transfer or remand order is filed in the office of the clerk of the district court of the transferee district."

Today we are also serving an information copy of the order on the transferor court(s). The Panel's governing statute, 28 U.S.C. §1407, requires that the transferee clerk "transmit a certified copy of the Panel's order to transfer to the clerk of the district court from which the action is being transferred [transferor court]."

Rule 1.6(a), pertaining to transfer of files, states "the clerk of the transferor district court shall forward to the clerk of the transferee district court the complete original file and a certified copy of the docket sheet for each transferred action." **With the advent of electronic filing, many transferee courts have found that it is not necessary to request the original file. Some transferee courts will send their certified copy of the Panel order with notification of the newly assigned transferee court case number and inform the transferor courts that they will copy the docket sheet via PACER. Others may request a certified copy of the docket sheet and a copy of the complaint (especially if it was removed from state court). You should be specific as to the files you would like to receive from the transferor courts and if no files will be necessary, you should make that clear. Therefore, Rule 1.6(a) will be satisfied once a transferor court has complied with your request.**

A list of involved counsel is attached.

Very truly,

Jeffery N. Lüthi
Clerk of the Panel

By [signature]
Deputy Clerk

Attachments (Transfer Order is a Separate Document)

cc: Transferee Judge: Judge Noel L. Hillman

JPML Form 29

IN RE: PET FOOD PRODUCTS LIABILITY LITIGATION

MDL No. 1850

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